

REMARKS/ARGUMENTS

Reconsideration of this application is requested. Claims 1-21 are active in the application and are presented for further examination.

Priority

Counsel notes that receipt has been acknowledged of the certified copies of the priority document, that is European application no. EP 03016054.3 filed July 15, 2003 and it is counsel's understanding that benefit of priority has been accorded as of the filing date of the European priority application. The Official Action also indicates that the effective U.S. filing date will be the filing date of the PCT application.

Response to Objections to the Specification

The examiner's comments at the bottom of page 2 of the Official Action have been noted and appropriate changes and adjustments have been made to pages 1-3 of the description.

Response to Claim Rejections/Lack of Clarity

Various claims were the subject of lack of clarity rejections stated on pages 2-3 of the Official Action in items 1-4. The term "reducing sugar derivative" is defined in amended claim 1 to be desoxy sugar or amino sugar basis for which may be found on page 2, third paragraph of the specification.

Various adjustments have been made to claim 9 to remove preferred and other variants of the claim to separate dependent claims. The "carbohydrate derivative" has been made the subject of dependent claim 18 and cellulose derivative has been replaced by carboxymethylcellulose based upon page 1, fourth paragraph of the specification. New claims 19 and 20 are directed to features previously included in claim 9.

Responding to the examiner's comments regarding claim 13, the preferred plant oils are now the subject of new claim 21.

In item 3 of the objection the examiner refers to the expression "if appropriate" which is said to appear in claim 13. The expression "if appropriate" does not appear in claim 13 or for that matter any of the claims now pending.

It is respectfully submitted that the new and amended claims presented above resolve the objections/rejections based on claim clarity. Reconsideration is requested.

Response to Prior Art-Based Rejection

All of the previously filed claims stand rejected based on a combination of six separate references. As the courts have stated, the fact that it is necessary to cite such a large number of references is, in and of itself, indicative of non-obviousness. *Minneapolis-Honeywell Regulator Company v. Midwestern Instruments, Inc.*, 298 F.2d 36, 38, 131 U.S.P.Q. 402, 403 (7th Cir. 1961); *The Ric-Wil Company v. E.B. Kaiser Company*, 179 F.2d 401, 404, 84 U.S.P.Q. 121, 124 (7th Cir. 1950); *Reynolds et al v. Whitin Machine Works*, 167 F.2d 78, 83, 76 U.S.P.Q. 551, 555 (4th Cir. 1948); and *Racal-Vadic, Inc. v. Universal Data Systems*, 207 U.S.P.Q. 902, 927 (N.D. Ala. 1980).

The applied references even if considered in combination are not suggestive of the subject matter defined by the new and amended claims presented above. Reconsideration is requested.

US 5,356,636 (Schneider et al) discloses a stable vitamin product in powder form. The matrix for the vitamins is gelatin (or gelatin-based material). The matrix is thermally crosslinked.

EP982038 (Bewert et al.) discloses stable vitamin formulations in powder form. The crosslinking is done by an enzymatic process. This reference mentions the disadvantage of thermal crosslinking (decrease of the content of the vitamins and the browning of the formulation). Therefore this reference preferably uses the enzymatic way to crosslink. This is done at a temperature of less than 80°C (page 3, lines 21 – 22). In the examples use only with gelatin. In Example 3 the powder is heated up to 120°C (for 20 minutes) and the powder got brownish.

Gerrard discloses in “Trends in Food Sciences & Technology” 13 (2002) 391 – 399 several types of crosslinking in food. She also discloses and discusses the Maillard type of crosslinking. But she does not disclose the option that it can be done with milk proteins. This reference is a very general overview and does not contain any relevant teaching in regard to the claims of the present patent application.

US 6,455,273 (Kodera et al) discloses a method for producing a protein hydrolysate with low bitterness. The patent does not disclose a formulation in a powder form comprising a matrix system and a fat-soluble active ingredient.

Furthermore it does not disclose thermal crosslinking. The processes disclosed by Koderá et al are all carried out at a temperature of between 30 and 50°C. This reference is not relevant in regard to the invention according to the claims of the subject patent application.

The combination of Schneider et al. (gelatin matrix and fat soluble active ingredients) with Bewert et al (protein and enzyme (transglutaminase)) does not lead to an embodiment of the present invention, that is a matrix of milk protein thermally crosslinked with a reducing sugar. A person skilled in the art would not get a hint from either of these two references that a suitable formulation in the form of a powder comprising a matrix of milk protein thermal crosslinked with a reducing sugar can be obtained. A person skilled in the art will not find all of the parts of the present invention in these references thus their combination would not result in the subject matter of applicants' claims.

Withdrawal of this rejection is requested.

Provisional Nonstatutory Obviousness-Type Double Patenting

Claims 1, 12-14, 16 and 17 are *provisionally* rejected on the ground of non-statutory obviousness-type double patenting based upon various claims contained in co-pending application Serial No. 10/551,197. It is counsel's understanding that the referenced pending application has not yet been allowed, nor of course has the present one. Applicants will hold a full and complete response to this provisional rejection in abeyance until such time as one or both applications contain allowable subject matter.

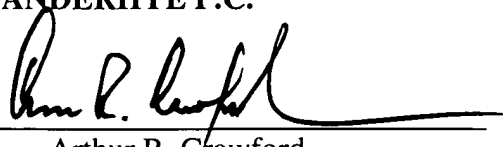
For the above reasons it is respectfully submitted that the claims of this application define inventive subject matter. Reconsideration and allowance are solicited. Should the examiner require further information, please contact the undersigned.

FUNDA et al
Appl. No. 10/564,635
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Respectfully submitted,

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By: _____



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